

JOSEPH P. RUSSONIELLO (Cal Bar. 44332)
United States Attorney

THOMAS MOORE (ASB 4305-078T)
Assistant U.S. Attorney
Chief, Tax Division

G. PATRICK JENNINGS
ADAIR F. BOROUGHS
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 683, Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-6648
Facsimile: (202) 307-0054
E-mail: guy.p.jennings@usdoj.gov

THOMAS M. ROHALL (Wash. St. Bar No. 12201)
Special Trial Counsel, Tax Division
U.S. Department of Justice
4330 Watt Ave., Suite 470
Stop No. SA 2801
Sacramento, CA 95821-7012
Tel No. (916) 974-5700
Fax No. (916) 974-5732

Attorneys for United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:) Case No. C-07-4826-CW

DEAN GORDON POTTER,

Debtor.

UNICO SERVICES INC.,

Plaintiff,

vs

UNITED STATES OF AMERICA,

Defendant.

Case No. C-08-00800-CW

**STIPULATION AND REQUEST FOR
ORDER CONSOLIDATING CASES**

1 The United States of America, on behalf of its agency, the Internal Revenue Service (the United
2 States or the Service), by and through its undersigned attorneys, the Plaintiff, Unico Services Inc.
3 (Unico) and the debtor, Dean Gordon Potter (debtor), by and through their undersigned attorneys hereby
4 stipulate to the following:

5 ***RECITALS***

6 (1). The debtor filed his chapter 11 petition with the United States Bankruptcy Court on
7 December 12, 2006.

8 (2). On April 9, 2007, debtor filed an adversary proceeding seeking a tax refund. *Potter v.*
9 *United States*, Adv. No. 07-04066-LT (Bankr. N.D. Cal.) The adversary proceeding seeks a refund of
10 individual income tax in the amount of \$358,054 for the taxable year ending December 31, 1998. The
11 adversary proceeding relates to an Employee Leasing Arrangement which involved Potter and Unico
12 Services, Inc. ("Leasing Arrangement").

13 (3). On May 29, 2007, Unico filed a complaint seeking a refund of employment taxes in the
14 United States District Court for the Eastern District of California. *Unico Services Inc. v. United States*,
15 case no. 2:07-CV-01009-MCE-KJM (E.D. Cal.). The claims in the Unico case also arise out of the
16 Leasing Arrangement.

17 (4). On September 7, 2007, the United States filed a Motion to Withdraw the Reference and to
18 Transfer Venue to The Eastern District of California with the United States Bankruptcy Court for the
19 Northern District of California.

20 (5). Pursuant to Bankruptcy Local Rule 5011-2(a) the United States Motion was transmitted to
21 the District Court for decision. The District Court granted the withdrawal of the reference and denied
22 the transfer of venue, without prejudice.

23 (6). On December 21, 2007, the United States filed a Motion to Transfer Venue with the United
24 States District Court for the Eastern District of California. The Motion sought to transfer venue as to the
25 Unico refund case to the Northern District. The District Court for the Eastern District of California, the
26 Honorable Morrison C. England, Jr. Presiding, granted the United States Motion to Transfer Venue
27 holding that "the interest of justice will be better served if this case and the Potter Federal Tax Disputes
28 are resolved in one forum."

(7). On February 6, 2008, the United States filed a Notice of Related Case pursuant to Civil Local Rule 3-13 identifying the transferred Unico refund suit as a related case. On February 12, 2008, this Court entered its Order entitled "Related Case Order" finding that the debtor's case is related to the Unico refund suit.

STIPULATION

(8). The parties stipulate that for purposes of Rule 42(a) of the Federal Rules of Civil Procedure there are common issues of law and fact present in both cases, such that consolidation of the two cases is warranted for all purposes, including but not limited to discovery, pre-trial, trial, post-trial, and appeal.

(9). The parties request that the Court enter an Order consolidating these cases pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. A proposed Order is submitted herewith.

Dated: February 20, 2008

JOSEPH P. RUSSONIELLO
United States Attorney

THOMAS MOORE
Assistant U.S. Attorney
Chief, Tax Division

By: /s/ G. Patrick Jennings
G. PATRICK JENNINGS
Trial Attorneys, Tax Division
United States Department of Justice
P.O. Box 683, Ben Franklin Station
Washington, D.C. 20044-0683
(202) 307-6648

Attorneys for the United States

Dated: February 19, 2008

/s/ John Gigounas
JOHN GIGOUNAS
Law Offices of John Gigounas
100 Pine Street, Suite 750
San Francisco, CA 94111-5207
(415) 391-4900

Attorneys for Debtor and Unico